

People v Bennett

2021 NY Slip Op 33984(U)

September 20, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 21-00150-01

Judge: Robert A. Neary

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**FILED
AND
ENTERED
ON 9-20-2021
WESTCHESTER
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
-----X
THE PEOPLE OF THE STATE OF NEW YORK

- against -

DECISION AND ORDER

DONALD MACK BENNETT,

Ind. No. 21-00150-01

Defendant.

-----X
NEARY, J.

The defendant, Donald Mack Bennett, has been charged with the crimes of Burglary in the Third Degree (seven counts), Grand Larceny in the Fourth Degree (six counts) and Petit Larceny (two counts). The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation in Support thereof. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

FILED 

SEP 20 2021

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

I., II. and III. MOTION TO INSPECT THE GRAND JURY MINUTES AND TO DISMISS OR REDUCE THE INDICTMENT, MOTION TO DISMISS THE INDICTMENT PURSUANT TO CPL §210.20 AND CPL §210.35 BECAUSE THE GRAND JURY PROCEEDING WAS DEFECTIVE and MOTION TO RELEASE THE GRAND JURY MINUTES TO THE DEFENDANT PURSUANT TO CPL §210.30(3)

The defendant's motion to inspect the Grand Jury minutes is granted. Upon an *in camera* inspection of the Grand Jury minutes by Court, the motion to dismiss the indictment or reduce a charged offense in the indictment is denied.

The Court has reviewed the minutes of the proceeding before the Grand Jury. The Grand Jury was properly instructed (see *People v. Calbud*, 49 NY2d 389, 426 NYS2d 389, 402 NE2d 1140 and *People v. Valles*, 62 NY2d 36, 476 NYS2d 50, 464 NE2d 418) and the evidence presented, if accepted as true would be legally sufficient to establish every element of the offenses charged. [See CPL §210.30(2)]. In addition, the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, and that it was instructed that only those grand jurors who had heard all the evidence could participate in voting on the matter.

The Court does not find that the release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court in making this determination.

IV. MOTION TO PRECLUDE ANY STATEMENT NOT INCLUDED OR SUFFICIENTLY DESCRIBED IN THE PEOPLE'S CPL §710.30 NOTICE PURSUANT TO CPL §§ AND 710.40

The defendant's motion is denied as speculative and premature.

V. MOTION TO SUPPRESS ANY STATEMENTS ALLEGEDLY MADE BY THE DEFENDANT PURSUANT TO CPL §§255.10, 255.20, 710.20(3) AND (4), 60.45, 710.40, 710.60 AND 710.70 OR IN THE ALTERNATIVE FOR A HUNTLEY HEARING

This branch of the defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL §60.45 (see CPL §710.20(3), CPL §710.60[3][b]; *People v. Weaver*, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v. New York*, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824).

VI. MOTION TO SUPPRESS OUT OF COURT IDENTIFICATION

This motion is granted to the limited extent of conducting a hearing prior to trial to determine whether or not the noticed identifications are unduly suggestive. [See *United States v. Wade*, 388 US 218, 87 S Ct. 1926, 18 LE2d 1149]. Specifically, the Court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. In the event the identifications are found to be unduly suggestive, the Court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

VII. MOTION TO SUPPRESS ANY TANGIBLE PROPERTY OR IN THE ALTERNATIVE FOR A MAPP HEARING

The defendant's motion to suppress evidence obtained pursuant to a search warrant issued in this matter is denied. The Court has reviewed the search warrant application and related papers and finds that the application did provide the signing magistrate with probable cause to believe that evidence of a crime could be located at the location described in the warrant. The papers were also proper in all respects. The motion to suppress is, therefore, denied.

VIII. MOTION FOR EXCULPATORY EVIDENCE

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and *Giglio v. United States*, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People are or become aware of any material which is arguable exculpatory but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

IX. MOTION FOR DISCOVERY EVIDENCE

The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 245. If any items set forth in CPL Article 245 have not been provided to the defendant pursuant to the Consent Discovery Order in the instant matter, said items are to be provided forthwith.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [See *People v. Colavito*, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; *Matter of Brown v. Grosso*, 285 AD2d 642, 729 NYS2d 492, *lv. denied* 97 NY2d 605, 737 NYS2d 52, 762 NE2d 930; *Matter of Brown v. Appelman*, 241 AD2d 279, 672 NYS2d 373; *Matter of Catterson v. Jones*, 229 AD2d 435, 644 NYS2d 573; *Matter of Catterson v. Rohl*, 202 AD2d 420, 608 NYS2d 696, *lv. denied* 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

X. MOTION FOR A SANDOVAL/VENTIMIGLIA./MOLINEUX HEARING

Immediately prior to commencement of jury selection, the prosecutor shall, upon request of the defendant, notify the defendant of any prior criminal act which the People seek to use in the cross-examination of the defendant as well as all specific instances of the defendant's prior uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for the purposes of impeaching the credibility of the defendant. Thereafter, upon the defendant's request, the trial court shall conduct a *Sandoval* and/or *Ventimiglia* hearing prior to the commencement of trial. [See *People v. Sandoval*, 34 NY2d 371 (1974); *People v. Ventimiglia*, 52 NY2d 350 (1981); *People v. Molineux*, 168 NY 264 (1901)].

XI. MOTION TO RESERVE THE RIGHT TO MAKE FURTHER MOTION PURSUANT TO CPL §255.20(2)

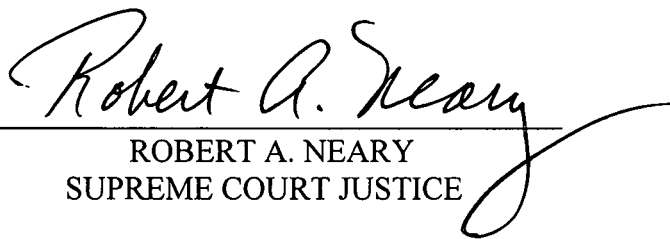
Upon a proper showing, the Court will entertain appropriate additional motions based upon grounds of which the defendant could not, with due diligence, have been previously

aware, or which, for other good cause, could not reasonably have been raised in this motion.

[See CPL §255.20(3)].

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
September 20, 2021


ROBERT A. NEARY
SUPREME COURT JUSTICE

Kristina Dushaj
Assistant District Attorney
Westchester County
Office of the District Attorney
Richard J. Daronco Courthouse
111 Martin Luther King Blvd.
White Plains, New York 10601
kdushaj@westchesterda.net

Michael D. Litman, Esq.
Attorney for Defendant
Law Office of Michael D. Litman, PLLC
75 South Broadway, Suite 403
White Plains, New York 10601
mlitman@mlitmanlaw.com